

**REMARKS/DISCUSSION:**

This Amendment C is being filed within one month after the shortened statutory period for response that ended on February 16, 2006. Accordingly, a Petition for a One-Month Extension of Time is made a part of the transmittal letter, filed herewith.

By this Amendment C, claims 21-25 and 27-32 are pending in this application. Claims 1-20 and 26 have been canceled. Support for the amendments to the claims 21, 24 and 29 can be found in Figures 1, 2B, 23, 26 and 36 along with the corresponding description. Accordingly, no new matter is added by these amendments or new claims.

Amendment and/or cancellation of claims are not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

**Rejection under 35 U.S.C. § 102(e)**

Claims 21-24, 27-32 stand rejected as being anticipated by U.S. Patent No. 6,117,152 to Huitema as noted in the Office Action. Independent claims 21 and 24 have been amended to recite a clamp member rotatably supported adjacent to the blade and an operating element operatively associated with the clamp member and blade, the operating element moveable to cause corresponding rotation of the clamp member and blade. A clamp member and operating element as now claimed is neither disclosed nor suggested in the Huitema reference. By reason of dependency, claims 22, 23, 25, 27, 28 and 31 are also patentable over Huitema.

Independent claim 29 has been amended to recite a clamp member rotatably supported adjacent the blade, which is neither disclosed nor suggested by Huitema. By reason of dependency, claims 30 and 32 are also patentable over Huitema.

Applicant respectfully transverses the Examiner's rejection of Claims 21-24 and 27-32 over Huitema because, according to Applicant's understanding, the Huitema reference neither teaches nor suggests the elements of the Applicant's invention. It is Applicant's understanding that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See for example MPEP 2131.

The Huitema reference does not, according to Applicant's understanding, teach or suggest at least one functional asymmetry, wherein the functional asymmetry (a balance portion) is positioned to counter torque created by the curved treatment portion. Nor has the Examiner identified any portion of the Huitema reference that teaches Applicant's claimed structure or even discloses an appreciation that torque is created by the curved treatment portion identified by the Examiner. The Examiner simply *assumes* that the blade in Huitema generates undesirable torque and that the blade in Huitema is balanced. Further, the Examiner simply *assumes* that certain portions of the blade illustrated in Fig. 3 in Huitema are balance portions, without any suggestion from Huitema that balance portions even exist in the disclosed blade design. Therefore, according to the Examiner, the alleged functional asymmetry 59 of Huitema counters torque created by the curved treatment section of Huitema without any suggestion by Huitema that torque created by the curved treatment section even exists in the disclosed blade or is a problem that needs to be addressed. Further, nothing in the text of the Huitema reference supports the Examiner's contention that there are any elements that counter torque created by the curved portion.

The only discussion Huitema provides regarding the shape of the blade relates to the blade's functional use and to facilitate anatomical access and visualization during the use of the ultrasonic instrument. Col. 4, line 52 through col. 5, line 20. There is not even a hint that the shape of the Huitema blade contributes to a balance function.

Regarding claim 22, the Examiner states that the functional asymmetry extends from distal tip 54 of the blade to a point inside the treatment portion. It is unclear to Applicant at this point what the Examiner considers to be the functional asymmetry that extends from the distal tip 54. Although this rejection is now moot in view of the amendments, Applicant is compelled to put on record that Applicant is unable to appreciate from the Huitema disclosure a functional asymmetry extending from the distal tip.

Claims 21-25 stand rejected as being anticipated by U.S. Patent No. 6,283,981 to Beaupre as noted in the Office Action. Independent claims 21 and 24 have been amended as noted above to recite elements neither disclosed nor suggested by the Beaupre reference. By reason of dependency, claims 22, 23 and 25 are also patentable over Beaupre.

Further, Applicant respectfully disagrees with the Examiner's interpretation of what Beaupre discloses. The Examiner's attention is initially directed to column 3, line 48 through col. 4, line 7. Specifically, Beaupre teaches a treatment region 26 and a *separate* balance region 28—not a treatment region *comprising* a balance region as stated by the Examiner. A convex bottom surface (32) and a central ridge (37) are included within the treatment region 26—and are not disclosed to be balance portions as asserted by the Examiner. Further, and quite clearly, Beaupre teaches within the balance region 28 a first cutout 38 and a second cutout 40, *which act as asymmetric balance features*. Beaupre neither discloses nor suggests balance features *within the treatment region* as is claimed by Applicant.

The Beaupre Patent goes on to state:

In an ultrasonic instrument designed according to the method of the present invention, the balance portion generally extends from a node point on the ultrasonic transmission rod to the *proximal end of the treatment portion*.

(Col. 2, lines 51-55, *emphasis added*).

The Beaupre Patent teaches a treatment portion 26 comprising a functional feature known as a functional asymmetry. Specifically, the treatment portion is the area of the blade that contacts the tissue that is under treatment by the ultrasonic surgical instrument. Proximal to the treatment portion 26 is a balance region 28 where balance features are incorporated. Proximal to the balance region 28 is the ultrasonic transmission rod (see Figs. 2-9 of the Beaupre Patent).

See also, page 4, lines 12-15 of the instant application. "While U.S. patent application Ser. No. 09/106,686 [a related Beaupre application] has proven eminently successful at balancing blades and waveguides *proximal to the balance asymmetry*, there are some applications where some balancing may be desirable within *the functional portion* of an asymmetric blade." (*emphasis added*)

The instant invention discloses and claims balancing *within* the functional portion (i.e. the curved treatment portion) of an asymmetric blade as clearly recited in the claims.

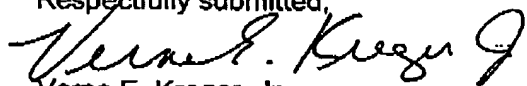
#### Conclusion

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. §§ 102(e) have been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-0736/VEK.

Respectfully submitted,



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